

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
[www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



Attachment No. 2

**INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 47, Section 4086  
of the General Industry Safety Orders.

**Momentary Contact Devices for Portable Power Driven Augers****SUMMARY**

Section 4086 of the General Industry Safety Orders (GISO) requires all portable power pipe threading/cutting machines and portable power drives to be permanently equipped with a momentary contact device (so-called "deadman" control or "kill switch"). In the Occupational Safety and Health Appeals Board (OSHAB) Decision In the Matter of Frontier Fence, Docket Nos. 05-R2D3-4378 and 4379, dated November 7, 2007, an employee assisting in the operation of a five horsepower, two-man portable power driven auger (earth drill) was entangled by the rotating auger when the machine became stuck after coming in contact with an object below ground. Augers of this type are handled by one or two employees typically to plant large shrubs, install fences, build decks, dig mailbox holes and dig holes for other structural members. They are not related to grain augers used in agriculture to move grain from trucks and carts into storage bins.

The primary operator was not able to control the auger and it fell over onto the assisting employee's leg. The auger was not equipped with a functioning momentary contact device (MCD)<sup>1</sup> and, therefore, could not be turned off as it continued to rotate, seriously injuring the employee's leg. The Division of Occupational Safety and Health (Division) cited the employer for failing to provide an MCD on the auger; however, the OSHAB Administrative Law Judge determined that by definition, an auger is not any of the listed pieces of equipment contained in Section 4086 and dismissed the citation. As a result of this OSHAB decision, the Division is not able to cite the employer for exposing the employee to the possibility of serious physical injury by failing to use augers equipped with an MCD.

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<sup>1</sup> A momentary contact device is a type of device in which a switch, trigger or button closes or opens the circuit when it is actuated.

The purpose of this rulemaking is to amend Section 4086 to specifically require all portable power driven augers, both single and dual operator types, regardless of how they are powered (gasoline, hydraulic or electric), to be equipped with a functioning MCD.

This proposal also deletes unnecessary language pertaining to a six month effective date. The standard became effective on May 11, 1984, and enforceable six months later. There is no reason to specify a six month effective date for auger MCDs since this type of equipment is typically provided with an MCD by the manufacturer.

### **SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**

#### **Section 4086. Momentary Contact Devices.**

This section requires all portable power pipe threading/cutting machines and portable power drives to be equipped with an MCD. Amendments are proposed to delete the six month effective date as unnecessary and include language which names portable power driven augers as listed equipment requiring an MCD. The proposal is necessary to ensure that employers understand that they must use augers that have a functional MCD, and it will provide the Division with the ability to enforce the MCD provisions of Section 4086 upon auger users, thus preventing exacerbation of contact injury (entanglement) created by an uncontrolled, rotating auger head.

Board staff consulted with manufacturers and a distributor of portable power driven augers and ascertained that the proposal is feasible and consistent with industry practice as such equipment is equipped with an MCD.

### **DOCUMENT RELIED UPON**

1. Occupational Safety and Health Appeals Board Decision, Docket Nos. 05-R2D3-4378, and 4379, In the Matter of Frontier Fence, dated November 7, 2007.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

### **REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES**

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

### **SPECIFIC TECHNOLOGY OR EQUIPMENT**

This proposal will not mandate the use of specific technologies or equipment.

## **COST ESTIMATES OF PROPOSED ACTION**

### **Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

### **Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

### **Impact on Businesses**

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

### **Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

### **Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.

## **DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

### **ASSESSMENT**

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### **ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS**

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.